

**Notice of Allowability**

Application No.

09/506,361

Examiner

Catherine S. Williams

Applicant(s)

SPINOZA, MARC HOWARD

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to request for a phone interview by applicant's rep on 1/7/04.
2. ☒ The allowed claim(s) is/are 13-20, 31-36 and 39.
3. ☒ The drawings filed on 18 February 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____  | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

### **EXAMINER'S AMENDMENT**

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 1/8/04, Leonard Mitchard requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 14-1140 the required fee of \$110 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Specification:

On page 1 before the first line starting "The present invention", --This is a continuation of PCT application PCT/GB98/02502, filed 20 August 1998, the entire content of which is hereby incorporated by reference in this application.—has been added.

In the Claims:

Claim 13, "A fastener for securing a tube to a patient, comprising a sleeve of variable length capable when lengthened of gripping the tube." has been replaced with new Claim 13 below,

Claim 13 (currently amended) --A fastener in combination with a tube for securing said tube to a patient, said fastener comprising a tubular sleeve of variable length capable when lengthened of gripping the tube, wherein the tube has a lumen and is adapted to transport fluid to

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or from a patient, wherein the sleeve when lengthened reduces in diameter and prevents the tube from sliding within the sleeve, and wherein the sleeve grips the tube with an evenly distributed and firm but gentle compressive force over a large area of the tube, thereby ensuring the tube is secure without restricting its lumen.--

In Claims 14-20 and 31-35, "fastener" has been replaced with --combination--.

Claims 21-30 have been cancelled.

Claim 36, "A fastener comprising a sleeve of variable length capable when lengthened of gripping the tube for the purpose of securing the tube to a patient." has been replaced with new Claim 36 below,

Claim 36 (currently amended) --A fastener in combination with a tube, said fastener comprising a tubular sleeve of variable length capable when lengthened of gripping the tube for the purpose of securing the tube to a patient, wherein the tube has a lumen and is adapted to transport fluid to or from a patient, wherein the sleeve when lengthened reduces in diameter and prevents the tube from sliding within the sleeve, and wherein the sleeve grips the tube with an evenly distributed and firm but gentle compressive force over a large area of the tube, thereby ensuring the tube is secure without restricting its lumen.--

Claims 37-38 have been cancelled.

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In claim 39 line 1, --in combination with a tube—has been inserted after “fastener” and before “as defined in claim 13”.

In claim 39 line 2, “a” after “securing” and before “tube” has been replaced with --said--.

Claims 40-45 have been cancelled.

*Allowable Subject Matter*

Claims 13-20, 31-36 and 39 are allowed.

The following is an examiner’s statement of reasons for allowance:

The prior art fails to teach the combination of a fastener with a tube where the fastener is a tubular sleeve of variable length, the tube has a lumen and is adapted to transport fluid to or from a patient, the sleeve when lengthened reduces in diameter and prevents the tube from sliding within the sleeve, and the sleeve grips the tube with an evenly distributed and firm but gentle compressive force over a large area of the tube, thereby ensuring the tube is secure without restricting its lumen.

UK Patent Application GB 2061372 (‘372) discloses a fastener that most closely structurally resembles the claimed invention. However, the prior art fastener structure does not teach a sleeve that is capable of gripping “the tube with an evenly distributed and firm but gentle compressive force over a large area of the tube, thereby ensuring the tube is secure without restricting its lumen” and it would not be obvious to use this prior art fastener with a tube for transferring fluid to or from a patient. Applicant noted in paper #15 dated 10/20/03 that the ‘372 reference is a heavy-duty fastener and could cause unacceptable crushing or obstruction of the tube. The ‘372 reference discloses that galvanized steel wire is the preferred embodiment (see p.

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3 lines 73). A steel wire sleeve would not be appropriate for tubing that is transferring fluid to or from a patient. Tubing for transferring fluid to or from a patient is usually plastic, compliant and flexible and could easily be kinked or crushed from a steel wire sleeve. While the '372 reference does disclose that nylon wire could be used, the overall thrust of the prior art fastener is to tightly grip a solid cable i.e. "the cable grip can be used indoors or outdoors on any suitable structure such as a building or pole, down an excavation, in a mine shaft and elsewhere". See p. 1 lines 26-29.

US Pat#s 4,867,154 and 3,368,564 disclose fasteners for securing medical tubing where the fasteners comprise a sleeve of variable length capable when lengthened of gripping the tube. However, these reference do not teach, *inter alia*, a sleeve that "when lengthened reduces in diameter and prevents the tube from sliding within the sleeve, and the sleeve grips the tube with an evenly distributed and firm but gentle compressive force over a large area of the tube, thereby ensuring the tube is secure without restricting its lumen".

US Pat# 5,836,913 discloses a medical device that has a tubular sleeve surrounding a tube for transferring fluid to or from a patient. However, this reference does not teach, *inter alia*, a sleeve that "when lengthened reduces in diameter and prevents the tube from sliding within the sleeve".

In conclusion, none of the prior art alone anticipates or in combination renders the claimed invention obvious. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 703-308-4846.

The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2192.

Catherine S. Williams *CSW*.  
January 9, 2004